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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91218280
Party	Defendant Ibrahim Dabes dba Dabes Egyptian Imports
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Attachments	resp-motion410Opp.pdf(80622 bytes) exhibit a - int.pdf(2262024 bytes) exhibit b - req.pdf(2272647 bytes) exhibit c - responses to int-req.pdf(67993 bytes) exhibit d - email disc issues.pdf(280180 bytes) exhibit e - pb list of deficiencies.pdf(296883 bytes) exhibit f - no more to add.pdf(294288 bytes) exhibit g - supplemental resp.pdf(120707 bytes) exhibit h - motion to compel.pdf(483615 bytes) exhibit i - board order.pdf(219572 bytes) exhibit j - sup answ.pdf(118940 bytes)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In re Application No. 86/025,182
For the Mark: AMY GOLD TOBACCO MOLASSES (design)
Published in the *Official Gazette* on May 13, 2014

Mya Saray, LLC,)	
)	
Opposer,)	Opposition No.: 91218280
)	
v.)	
)	
Dabes, Ibrahim DBA)	
Dabes Egyptian Imports,)	
)	
Applicant.)	

**APPLICANT’S RESPONSE TO OPPOSER ’S FIRST
MOTION TO COMPEL**

Applicant, Ibrahim Dabes (“Applicant”), by and through undersigned counsel and pursuant to 37 CFR Sec. 2.127(a) and the Federal Rules of Civil Procedure, hereby responds to Opposer’s First Motion to Compel (“Motion”) as follows:

INTRODUCTION

Counsel for Opposer, Mya Saray, LLC, mailed copies of “Plaintiff’s First Set of Interrogatories to Defendant Dabes” and “Plaintiff’s First Set of Requests for Production to Defendant Dabes” on January 20, 2015. Please see Exhibits A and B. Applicant requested a six (6) day extension to submit a response, which Opposer granted, and on March 2, 2015 Applicant timely served its discovery responses and documents. Please see Exhibit C.

The parties agreed to participate in a telephone conference, at the request of Opposer's counsel, regarding Applicant's discovery responses. Opposer delineated the following issues in his email of April 27, 2015 to discuss during the conference:

“1. Reconsideration of marking all discovery production and answers as a whole as commercially sensitive.

2. Reconsideration of disclosure and answers for discovery related to Dabes' specific hookahs.

3. Arranging for inspection of physical samples.

4. Indicating which documents are responsive to which requests for production.

5. Reconsideration of disclosure and answers for discovery related to design of specific hookahs.

6. Reconsideration of disclosure and answer for discovery related to alternative brands of Dabes.” Please see Exhibit D.

The parties proceeded to discuss the above issues in a telephone conference the following day. In the conference, counsel for Opposer requested that Applicant reclassify the categories of the discovery answers, particularly to make those answers to the Request to Produce that were answered as “none” or “no documents” disclosable. However, no other specifics were provided by counsel for Opposer with regards to this request and this created some confusion for Applicant. In a later email, the undersigned requested a complete list of all deficiencies and requested changes; however, none was provided. Please see Exhibit E. During the telephone conference of April 28, the parties also discussed the Opposer's request to produce physical samples. Applicant pointed out that the products requested were no longer being sold in the United States (per the

answers to Interrogatories 33 and 34), and as such it was difficult (if at all possible) to obtain physical samples of these products in the United States. Finally, the parties discussed the objections raised in the interrogatories related to alternative brand designations and design of hookahs and specific hookahs. Counsel for Opposer did not raise any other concerns during the telephone conference. In fact, counsel for Opposer indicated in a later email that the issues presented during the conference were comprehensive: “I don't recall being tasked with sending over any description of deficiencies. Other than our meeting agenda, and our telephonic discussion, *I'm not sure that there is more to add.*” Please see Exhibit F.

The parties have another proceeding pending before this Board, Cancellation No. 92060249 (“the ‘249 Proceeding”), in which Opposer seeks cancellation of Applicant’s US Registration No. 4,536,391. Following the telephone conference, Applicant made a good faith effort to address Opposer’s concerns by filing supplemental answers in the ‘249 Proceeding. Please see Exhibit G. However, Applicant requested an extension of time to submit supplemental answers in this proceeding. The week prior to the deadline to submit supplemental answers, the Board issued an order regarding the consented amendment filed by Applicant in this proceeding and Applicant needed more time to consider the supplemental answers in light of the Board’s order. Please see Exhibit I. Opposer did not respond to Applicant’s request for an extension of time, but instead filed the Motion to Compel just two days after Applicant served its supplemental answers in the ‘249 Proceeding. Please see Exhibit H.

Although Opposer certifies that it has “made a good faith effort...to resolve with the Defendant the issues presented in [this] motion,” Opposer disingenuously raises a

myriad of new issues that it never before tried to resolve with Applicant. Additionally, Opposer's Motion consists of baseless accusations¹ that tend to obscure the pertinent facts at issue and countless challenges, which Opposer fails to support with relevant case law.²

ARGUMENTS

I. Opposer has not made a good faith effort to resolve the majority of the issues presented in part one of its Motion.

Opposer has failed to make a good faith effort to resolve the majority of the discovery issues raised in its Motion to Compel as required by TBMP Sec. 408.01, TBMP Sec. 523 and 37 CFR Sec. 2.120; accordingly, Opposer's Motion to Compel should be denied for lack of good faith to the extent that it requests the Board to act on matters that were not previously raised during the meet and confer process.

It is well established that the Board expects the parties in an inter partes proceeding to "cooperate with one another in the discovery process, and looks with extreme disfavor on those who do not." TMBP Sec. 408.01. To this end, the "meet and confer" requirement of 37 CFR Sec. 2.120 provides that, in the event the parties have been "unable to reach agreement," the moving party must make "a good faith effort, by conference or correspondence, to resolve with the other party or its attorney the issues

¹ Throughout the Motion, Opposer makes unwarranted accusations about Applicant and its products, such as accusing Applicant of being a free rider and of selling counterfeits. Please see Exhibit H.

² Throughout the Motion, Opposer cites cases that are completely unrelated to this proceeding; for example, Opposer cites wrongful termination cases like *Momah v. Albert Einstein Medical Center*, 164 F.R.D. 412, 417 (E.D.Pa.1996) and personal injury cases like *Ostrander v. Cone Mills, Inc.*, 119 F.R.D. 417, 420 (D.Minn.1988), among others. While the cases might relate to discovery in general, they do not relate to discovery in a trademark opposition proceeding.

presented in the motion.” TBMP Sec. 523.02. The purpose of the meet and confer requirement is to “relieve the Board of the burden of ruling on motions to compel in those cases where the parties could resolve their discovery disputes by agreement if they made a good faith effort to do so.” *Macmillan Bloedel Ltd.*, 203 U.S.P.Q. (BNA) ¶ 952 (P.T.O. Sept. 18, 1979).

The filing of a Motion to Compel that does not comply with the meet and confer requirements of 37 CFR Sec. 2.120 should be denied. *Macmillan Bloedel Ltd.*, 203 U.S.P.Q. (BNA) ¶ 952 (P.T.O. Sept. 18, 1979) (“Inasmuch as applicant has indicated that no attempt was made to resolve the matter raised in the instant motion to compel prior to the filing thereof, the *motion will be given no consideration* at the present time.”)

Additionally, it is the duty of each party to present all issues with the same specificity as in their discovery briefs in order to successfully “meet and confer.” *Amazon Technologies Inc. v. Wax*, 93 USPQ2d 1702 (TTAB 2009) (“In order for the meet and confer process to be meaningful and serve its intended purpose, ‘the parties must *present to each other the merits of their respective positions with the same candor, specificity, and support* during informal negotiations as during the briefing of discovery motions.’” (Quoting *Nevada Power Co. v. Monsanto Co.*, 151 F.R.D. 118, 120 (D. Nev. 1993)). In the present case, even though counsel for Applicant requested a “complete listing of the asserted deficiencies/requested changes” and “case law from you on the importance of the appearance of the product/producing physical samples in the likelihood of confusion analysis” during the meet and confer process, none was provided. Please see Exhibit F. Yet, Opposer was able provide the Board with a very detailed analysis of

its discovery issues only two days after Applicant submitted its supplemental responses. Please see Opposer's Motion, in particular, the chart in Exhibit 3.

Furthermore, as the Board in Amazon Technologies Inc. reasoned, "the meet and confer process cannot be truly complete until "'after *all the cards have been laid on the table*,' by both parties." Amazon Technologies Inc. v. Wax, 93 USPQ2d 1702 (TTAB 2009) ("The purpose of the conference requirement is to promote a frank exchange between counsel to *resolve issues by agreement or to at least narrow and focus the matters in controversy before judicial resolution is sought*."). In the present case, it is clear that Opposer has failed to lay all the cards on the table. A comparison of the few issues delineated in the April 27, 2015 email and the numerous challenges raised in the Motion show the "cards" Opposer chose to withhold from the meet and confer process, which almost amount to a full deck. In particular, the issues raised in sections 1-2, 4-15, 17-18 and 20-21 under part one of the Motion were not discussed by the parties. These newly raised issues should have been resolved or at least narrowed before the Board without the necessity of filing this Motion. Indeed, the premature filing of the Motion to Compel has resulted in a waste of time, for both Applicant and the Board. Accordingly, it is respectfully submitted that Opposer's First Motion to Compel should be denied for lack of good faith effort, in the very least, to the extent that it requests the Board to act on matters that were not previously discussed by the parties.

II. Applicant has addressed the discovery issues presented in part two of Opposer's Motion.

The challenges raised in sections A and B under part two of the Motion are being addressed in Opposer's supplemental answers, which are being submitted to Opposer in conjunction with this response. Please see Exhibit J. Accordingly, Applicant respectfully submits that these concerns have been addressed and the Motion to Compel should be considered moot in this regard.

III. Applicant maintains that the interrogatories pertaining to alternate brand designations, the design of the hookahs and specific hookahs have no bearing on the issues presented in this proceeding.

Of the few discovery issues discussed during the meet and confer process, the parties did discuss Applicant's objections to interrogatories related to (1) alternative brand designations and (2) design of hookahs and specific hookahs. Please see Exhibit A, Interrogatory Nos. 3-4, and 33-34.

Firstly, Opposer takes issue with Applicant's objections to the interrogatories pertaining to "alternative brand designations" on the ground that they seek information that is irrelevant to the matter at issue in this proceeding and requests that the Board strike these objections. Please see pgs. 2 and 7-8 of Opposer's Motion to Compel, Exhibit H. It is well established that in an inter partes proceeding before the Trademark Trial and Appeal Board, a likelihood of confusion analysis is limited to a consideration of the marks identified in the Notice of Opposition. *Fossil Inc.*, 49 U.S.P.Q.2d 1451 (P.T.O. Oct. 30, 1998) ("In summary, our likelihood of confusion analysis will be *limited to a*

*consideration of applicant's mark and opposer's word mark FOSSIL in all normal manners of presentation.”); Wine Oh! LLC, 2006, 2008 WL 3244035, at *2 (July 22, 2008) ([O]ur likelihood of confusion analysis is limited solely to opposer's mark and goods in the pleaded application vis-à-vis the mark and goods in the subject application.”)*

To this end, the Board has held that interrogatories requesting information about “other marks” are not relevant to these proceedings. Volkswagenwerk Aktiengesellschaft, 181 U.S.P.Q. (BNA) 471 (P.T.O. Mar. 28, 1974) (“In interrogatory No. 12, opposer seeks information concerning *trademarks and/or service marks other than “MUD BUG”* that have been used by applicant or its predecessor in connection with the sale of its products or services. Here again, the information sought by opposer is *clearly not relevant to the specific issue involved in this opposition proceeding and applicant's objections thereto are likewise proper.*”); Varian Associates, 188 U.S.P.Q. (BNA) 581 (P.T.O. Sept. 22, 1975) (“Applicant has asked opposer to *list all marks other than “PALO ALTO”* used by opposer. *Such use is irrelevant* to the issue of applicant's right to register its mark and opposer's claim of damage.”) Just as the Board sustained the objections to interrogatories concerning “other marks” because they were not relevant to the issues involved in the respective inter partes proceedings, the Board should sustain Applicant’s objections to the interrogatories concerning “alternative brand designations” as they are clearly meant to seek information that is not relevant to the issues presented in this proceeding.

Secondly, it is respectfully submitted that Opposer’s interrogatories regarding the appearance of hookahs would more properly relate to issues raised in an unfair

competition action in a court rather than in this inter partes proceeding before the Trademark Trial and Appeal Board. In particular, Opposer appears to be concerned with the “product design difference[s]” between specific hookahs. Please see Interrogatory Nos. 33 and 34 in Exhibit A. In this regard, Opposer generally asserts that said design differences are “highly probative of a central matter in this proceeding” but does not explain how design differences between Opposer’s and Applicant’s hookahs are in any way relevant in a likelihood of confusion analysis of the respective marks.

The Board held in *Gen. Foods Corp.* that the appearance of the parties’ goods is not relevant to the question of likelihood of confusion in an inter partes proceeding before the Trademark Trial and Appeal Board. *Gen. Foods Corp.*, 165 U.S.P.Q. (BNA) 797 (P.T.O. Apr. 23, 1970) (“Opposer in its brief stresses the fact that the dress of the containers in which applicant’s product is sold is *strikingly similar in appearance* to the dress of the containers for opposer’s product, but *this would be relevant, if at all, only in a civil iaction for unfair competition.*”) Similarly, in *Crawford Fitting Co.*, the Board held that the opposer’s assertions regarding the appearance of the products were not relevant to the issue of likelihood of confusion. *Crawford Fitting Co.*, 135 U.S.P.Q. (BNA) 381 (P.T.O. Oct. 5, 1962) (“What are the patterns of which opposer complains? ...that applicant sells a product which in *external appearance is substantially identical* to the product sold by opposer...As is apparent, much of what opposer relies upon herein as indicative of likelihood of purchaser confusion *relates to matters of unfair competition*. Our jurisdiction is statutory and *we cannot concern ourselves with the question of unfair competition in this proceeding.*”) The Opposer’s assertions that these interrogatories seek information that is “highly probative” in this proceeding are clearly misguided. In

actuality, it appears that Opposer is on a “fishing expedition,” where it is seeking information beyond the scope of its claims. These interrogatories have been properly objected to on the ground that they seek information that is irrelevant to the matter at issue in this proceeding because, as the Board held in Gen. Foods Corp., this information would only be relevant in a civil action for unfair competition. Accordingly, Applicant’s objections to discovery requests pertaining to design of hookahs and specific hookahs are proper and should be sustained.

IV. Applicant has sufficiently addressed the discovery request pertaining to the physical specimens of hookahs “AMY-018” and “Jinn”

Thirdly, the parties met and conferred over “arranging for inspection of physical samples.” Please see Exhibit B, in particular Opposer’s Request No. 9. In its request, Opposer seeks physical samples of “Subject Hookahs” which have been defined to include the hookah of Exhibit 2 labeled as “AMY-018” and the hookah of Exhibit 3 labeled as “Jinn.” As noted above and as set forth in Applicant’s answers to Interrogatories 33 and 34, hookahs “AMY-018” and “Jinn” are no longer sold in the US. Due to the unavailability of these products, it is respectfully submitted that this request is unduly burdensome. As noted above, counsel for Applicant explained these circumstances to counsel for Opposer during the meet and confer process. Nevertheless, Opposer disingenuously asserts in its Motion that Applicant has “without benefit of explanation” objected to this request. Please see page 20 of Exhibit H.

In an effort to satisfy Opposer’s request, Applicant provided photographs of the “AMY-018” and “Jinn” hookahs. Please see Bates Stamped documents 00013 and

00118, respectively. As the United States Patent and Trademark Office routinely considers photographs to be adequate product specimens³, Applicant believes that it has sufficiently addressed the requirements of this discovery request. Additionally, Applicant answers the question with particularity by referencing Bates Numbers in its supplemental answers. Please see Exhibit J. Opposer clearly attempts to paint Applicant in a bad light by asserting that the answers are “a further attempt to evade the requests,” when Applicant had fully cooperated and explained during the meet and confer process why it was unable to provide physical samples of these products.

Conclusion

This proceeding involves a relatively straightforward issue on the question of likelihood of confusion between the parties’ marks. As the Board may recognize, Opposer’s Motion consists of baseless accusations that tend to obscure the pertinent facts at issue and countless challenges, which Opposer fails to support with relevant case law. Additionally, Opposer has prematurely filed this Motion without making a good faith effort to resolve the majority of the discovery issues raised therein. Opposer’s failure to lay all the cards on the table before filing its Motion—as required during the meet and confer process—demonstrate Opposer’s lack of good faith when filing the Motion. For this reason, the Motion should be denied for lack of good faith to the extent that it requests the Board to act on matters that were not raised during the meet and confer process.

Of the few issues that Opposer introduced during the meet and confer process, Applicant has addressed some in its supplemental answers by reclassifying the categories

³ TMEP Sec. 904.

of the discovery answers and specifying which documents were responsive to which request to produce. Applicant now narrows before the Board the remaining issues discussed, i.e., the production of physical samples and the objections to interrogatories pertaining to alternate brand designations and the design of the hookahs. As noted above, the hookahs that Opposer requests are no longer sold in the US. Additionally, the objections to interrogatories seeking information on alternative brand designations and the design of the products are proper, as the Board does not consider other marks in inter partes proceedings and the appearance of the goods of the parties is not a relevant factor in a likelihood of confusion analysis. In view of the foregoing, Applicant respectfully submits that these objections should be sustained and Opposer's Motion should be denied.

Respectfully submitted,

Date: June 24, 2015

/ Paul D. Bianco /
Paul D. Bianco

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CERTIFICATE OF SERVICE

It is hereby certified that a copy of this APPLICANT'S RESPONSE TO OPPOSER 'S FIRST MOTION TO COMPEL was served by First Class Mail to M. Keith Blankenship, Esq., Da Vinci's Notebook, LLC, 10302 Bristow Center Dr. #52, Bristow, VA 20136, Attorney for Opposer , on this 24th day of June 2015.

/Paul D. Bianco/
Paul D. Bianco

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EXHIBIT “A”

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

MYA SARAY, LLC,

Plaintiff,

v.

DABES, IBRAHIM

Defendant.

Proceeding No. 91218280

PLAINTIFF'S FIRST SET OF INTERROGATORIES TO DEFENDANT DABES

Plaintiff Mya Saray, LLC ("Plaintiff"), by its attorneys and pursuant to Fed. R. Civ. P. 33(a), requests Defendant Ibrahim Dabes to answer the following Interrogatories in writing and under oath or affirmation within thirty (30) days from the date of service. If any interrogatory cannot be answered in full after exercising due diligence to secure the information, please so state and answer the interrogatory to the extent possible, specifying the reason for any inability to answer the remainder of any such interrogatory and stating whatever information or knowledge presently is available concerning the unanswered portion of said interrogatory.

INSTRUCTIONS AND DEFINITION OF TERMS

The following instructions and definitions are to be utilized in complying with these requests:

A. "Defendant" or "you" designate the named Defendant in this action, Ibrahim Dabes, including his counsel, agents, representatives, and other persons acting on their behalf, as well as all businesses operated by him.

B. These Interrogatories are addressed to Defendant and any and all of their agents, representatives, attorneys, and other persons acting on their behalf. If the requested information or documents are known by Defendant to exist or are not in the possession, custody or control of Defendant, its agents, representatives, attorneys, or other persons acting on their behalf, Defendant should so indicate and provide the name of the person or entity maintaining the documents or possessing the information. Each discovery request not only calls for the knowledge of the Defendant but also for all knowledge or documentation that is available to the Defendant through reasonable inquiry, including inquiry of your representatives and agents.

C. "Persons" shall mean and include a natural person, individual, partnership, firm, corporation or any kind of business or legal entity, its agents or employees.

D. The term "document" is used herein with its customary broad meaning and thus includes, by way of illustration and not limitation, the following, whether written, printed, reproduced by any process including recordings, or

produced by hand, and whether or not claimed to be privileged or otherwise excludable from discovery: tapes; notes; analyses; computer printouts; information maintained on computer disks or hard drives; correspondence; emails; video, audio, stenographic, magnetic, electronic digital or analog recordings or data; communications of any nature; recordings or transcriptions of voice mail messages; telegrams; letters; memoranda; notebooks of any character; summaries or records of personal conversations; diaries; routing slips or memoranda; reports; publications; photographs; minutes or records or tapes of meetings; transcripts of oral testimony or statements; reports and/or summaries of interviews; reports and/or summaries of investigations; agreements and contracts, including all modifications or revisions thereof; reports and/or summaries of negotiations; court papers; brochures; pamphlets; press releases; drafts, revisions or drafts; translations; tape recordings; documents, files or data download or retrieved from the Internet or from or through any online service or sever, and reports and dictation belts. Any document with any marks on any sheet or side thereof, including by way of illustration and not limitation, initials, stamped indicia, comments or notations of any character, not a part of the original text, or any reproduction thereof, is to be considered a separate document for purposes of this request. "Document" or "documents" include documents prepared by, for or at the direction of Defendants (or those acting or purporting to act on their behalf) and documents prepared by, for or at the direction of others.

E. When referring to a natural person, "identify" means that you shall state the person's full name, present or last known address, home and business

telephone numbers, and position of employment at the time in question. When referring to a company, “identify” means that you shall state the company’s full name, legal status by type and state (e.g., a Delaware Corporation), present or last known address, business telephone and facsimile numbers.

F. When referring to a document, “identify” means that you shall state the general nature of the document, the author or the originator, each addressee, all individuals designated to receive or who otherwise have received a copy of the document, date, title and general subject matter, present custodian of each copy and last known address of each such custodian.

G. When referring to an oral statement or conversation, “identify” means that you shall state the date and place the oral statement or conversation was made or took place, the identity of each person who made, participated in, or heard any part of the oral statement or conversation, the substance of what was said by each person who made or participated in the oral statement or conversation, and the identity and present custodian of any written or any mechanical, electrical or computerized recording that recorded, summarized, or confirmed such oral statement or conversation.

H. As used herein:

1. The terms “reflect,” “refer” or “relate to” are intended to have the broadest possible meaning, and include any logical or factual connection with the matters discussed.
2. The term “or” means “and/or”.

3. Any word written in the singular shall include the plural and vice versa.

4. The term “any” means “each, any and all.”

5. When appropriate, the use of the masculine also includes the feminine, and vice versa.

I. Any other words used herein shall be defined according to standard American usage, as shown in a dictionary of the English language.

J. If any documents responsive to any interrogatory have been lost, mutilated or destroyed, so state and identify each such document, and state to which interrogatory the document would have been responsive.

K. If the Defendant lacks possession, custody or control of one or more documents that are responsive to a particular interrogatory, so state in response to such interrogatory.

L. If you contend that you are entitled to withhold any information requested herein on the basis of the attorney-client privilege, the work-product doctrine, or some other ground, for each item information so withheld, state the basis upon which you contend you are entitled to withhold the information.

M. These Interrogatories are continuing in nature so as to require you to provide supplemental information as set forth in F.R.C.P. 26(e).

SPECIFIC INSTRUCTIONS AND DEFINITIONS

1. Defendant. Defendant means not only Ibrahim Dabes but also his agents, officers, employees, representatives and attorneys, and any predecessors, subsidiaries, controlled, controlling and affiliated

companies, and their agents, officers, employees, representatives and attorneys, to the fullest extent the context permits.

2. United States. The United States means the United States of America, and its territories and possessions.
3. AMY Brand. The AMY Brand includes the word “amy” applied by Defendant to a product or service, and all of the derivatives, including pictorial depictions, spoken versions, and logos including the word amy.
4. AMY Logo. The AMY Logo includes the brand that is the subject of U.S. Trademark Application No. 86,025,182
5. Logo Design Elements. The Logo Design Elements include those attributes of the AMY Logo other than the word “amy.”
6. Defendant Products. The Defendant Products include tobacco and smoking articles, including cigarettes, cigars, smoking pipes, and shishas.
7. MYA Trademarks. The term MYA Trademarks includes the trademarks described in the Notice of Opposition for this action, and includes U.S. Trademark Regs. No. 3031439; 3031440; 3684312; 3684311; 3840577; 3845276, as well as the Plaintiff’s mark as depicted in Exhibit 1 of this document, Plaintiff’s First Set Of Interrogatories To Defendant Dabes.

8. MYA Products. MYA Products includes hookahs, components of hookahs, tobacco for hookah smoking, and accessories related to the use of hookahs.
9. Retailer. A Retailer includes an entity that vends, sells, leases, or provides a product directly to an end user of that product.
10. Distributor. A Distributor includes an entity vends, sells, leases, or provides products in quantity to Retailers.
11. Subject Hookahs. The Subject Hookahs include the hookah of Exhibit 2 labeled as “AMY-018” and the hookah of Exhibit 3 labeled as “Jinn.”

INTERROGATORIES

INTERROGATORY NO. 1. Explain why (including the inspiration, significance, and meaning) Defendant selected the designation “AMY” as a brand for Defendant Products.

INTERROGATORY NO. 2. Explain the rationale for adopting the designation “AMY” in connection with Defendant’s Products and why “AMY” was selected over alternative designations, with specific reference to those designations.

INTERROGATORY NO. 3. If Defendant utilizes alternative brand designations in connection with Defendant Products, identify such alternative brand designations by its literal elements (e.g. words) and design elements (e.g., illustrated components).

INTERROGATORY NO. 4. Explain other inspiration and meaning of the alternative brand designations responsive to INTERROGATORY NO. 3 how the Products for such other alternative brand designations relate to Defendant Products sold under the AMY Brand with specific reference to Defendant Product quality, Defendant Product quantity (generally at this time), Defendant Product manufacturing source, the characteristics of prospective purchasers of the Defendant Products, and other significant criteria.

INTERROGATORY NO. 5. Identify the manufacturing source of the Defendant Products under the AMY Brand, (i) if manufactured by a third party, by name and location, and (ii) if manufactured by Defendant, by address and manager of factory?

INTERROGATORY NO. 6. Describe the importation of Defendant’s Products into the United States with specific reference to the:

- a. identities of customs brokers, warehousing, transport and shipping parties, handlers, and delivery agents;
- b. dates of importation, by arrival into the United States;
- c. quantities of Products divided into categories thereof (e.g., hookahs, hookah tobacco, etc.)

INTERROGATORY NO. 7. Identify each Distributor and Retailer known to Defendant authorized to sell Defendant Products in the United States. For each Distributor, include the geographic area, if any, to which the Distributor is permitted to distribute. (To the extent that the answer to this questions calls for the identification of more than 20 retailers, then Defendant need only list the 20 highest volume retailers)

INTERROGATORY NO. 8. Identify each hookah sold under the AMY Brand (including all internal names, code names, marketing names, and any other unique designations) and each hookah's date of first sale anywhere in the world, and its date of first sale under the AMY Brand, if different.

INTERROGATORY NO. 9. Identify the average distribution price and manufacture's suggested retail price, if any, of each hookah of INTERROGATORY NO. 8.

INTERROGATORY NO. 10. Identify the sales quantity in the United States of each hookah of INTERROGATORY NO. 8 by year.

INTERROGATORY NO. 11. Did you consider the affects of using the name AMY on Defendant Products notwithstanding Plaintiff's use of MYA with Plaintiff Products, and if so, what factors did you consider to be related to dispelling confusion?

INTERROGATORY NO. 12. Describe the extent to which Defendant searched for marks that might impede the use or registration of any AMY Brand for Defendant Products.

INTERROGATORY NO. 13. Identify the individuals most knowledgeable about the advertising, marketing, and/or promotion of each hookah of INTERROGATORY NO. 8.

INTERROGATORY NO. 14. Identify the individual most knowledgeable about the appearance and aesthetic properties of each hookah of INTERROGATORY NO. 8.

INTERROGATORY NO. 15. Describe in detail the date and circumstances under which Defendant first learned of each of the MYA Trademarks, including but not limited to, the persons that became aware of each of the MYA Trademarks, and all steps and actions taken, with respect to the design, development, offer for sale, and sales of Defendant Products identified in response to INTERROGATORY NO. 8, including any efforts by Defendant to avoid confusion between MYA Trademarks and the AMY Brand.

INTERROGATORY NO. 16. Identify each and every person with knowledge of any and all instances where Defendant received mail, orders, deliveries, telephone calls, bill, payments, invoices, or any other communications referring to or inquiring about either Plaintiff or the MYA Trademarks.

INTERROGATORY NO. 17. Identify all trade shows attended by Defendant, including name of trade show, date, and location, within the past four (4) years in which Defendant marketed Defendant Products.

INTERROGATORY NO. 18. Identify each and every person with knowledge of any and all instances where Defendant obtained any knowledge or information regarding any confusion whatsoever on the part of any person about the source,

affiliation, or sponsoring of any of Plaintiff Product and the source, affiliation, or sponsoring of Defendant Products.

INTERROGATORY NO. 19. State in detail all facts upon which Defendant bases its denial of likelihood of confusion of any of the MYA Trademarks and provide the identity of all individuals with knowledge of any such facts, and the identity of documents, communications, and thins relating to any such facts, including information that refutes Defendant's denial.

INTERROGATORY NO. 20. State in detail all facts upon which Defendant bases any defense raised by Defendant in this action and provide the identity of all individuals with knowledge of any such facts, and the identity of documents, communications, and thins relating to any such facts, including information that refutes Defendant's denial.

INTERROGATORY NO. 21. State the exact date(s) on which Defendant will rely as to when its use of the AMY Logo commenced in connection with the sale or distribution of each constituent (e.g., cigarettes) of the Products.

INTERROGATORY NO. 22. Identify all documents, purchase orders, invoices, labels, flyers, brochures, other advertising or any writing whatsoever that Defendant will rely upon to establish the date(s) specified in answer to INTERROGATORY NO. 21.

INTERROGATORY NO. 23. With respect to the first use(s) of the marks of the AMY Logo in connection with the sale of each product and/or service identified in above INTERROGATORY NO. 21, state:

(a) Each manner in which the applied-for designation was used, e.g. by affixing to containers, labels, or in newspaper advertising or fliers;

(b) If the applied-for designation was printed on containers for the product or on labels, the name and address of the person(s) or organization(s) which printed them;

(c) If the applied-for designation was used in brochures or fliers, the name and address of the person(s) or organization(s) which printed them;

(d) If the applied-for designation was used in media advertising, the name and address of the person(s) or organization(s) which advertised them;

(e) Whether the product and/or service was sold;

(f) Whether the product and/or service was offered free of charge;

(g) The name and address of the person(s) or organization(s) to whom the

product and/or service was sold; and

(h) Whether the sale of each product under the applied-for designation has been continuous from each date specified in above INTERROGATORY NO. 21 to the present.

INTERROGATORY NO. 24. Describe and identify the channels of trade in the United States of each Product.

INTERROGATORY NO. 25. Identify each item of sales literature, including brochures and fliers produced by or for Applicant for distribution in the United States to advertise each of the Products.

INTERROGATORY NO. 26. List all geographic areas (by city and state) in which Applicant sells each of the Products.

INTERROGATORY NO. 27. List all other media, not already identified, where Applicant has advertised each of the Products, state the amount expended by Defendant in the United States in the advertisement of each Product.

INTERROGATORY NO. 28. For each calendar year since commencement of use the AMY Brand or applied-for designation in connection with the sale of each of the Products, state the amount of sales by Defendant in the United States of each of the Products.

INTERROGATORY NO. 29. Identify the Defendant's predecessors-in-interest, and all of its subsidiaries and affiliated companies, and the officers, directors, employees, agents and representatives thereof.

INTERROGATORY NO. 30. Identify all persons, businesses, and entities involved in the proliferation of each Subject Hookah categorized by each Subject Hookah and by the following stages of development:

- a. the creation of each Subject Hookah, including its conception;
- b. the design of each Subject Hookah;
- c. the development of each Subject Hookah;
- d. the production of each Subject Hookah;
- e. the manufacture of each Subject Hookah, including quantities manufactured for Defendant;
- f. the transfer of each Subject Hookah to any property owned, leased, controlled, or accessed for commercial purposes by the Defendant; and
- g. the marketing and advertisement of each Subject Hookah.

INTERROGATORY NO. 31 Identify each source, quantity, and dollar amount of each Subject Hookah sold by Defendant in the United States arranged with reference to each Subject Hookah and each transaction.

INTERROGATORY NO. 32. Identify each commercial purchaser, the total quantity, and total dollar amount of each Subject Hookah vended by Defendant in the United States, arranged with reference to each Subject Hookah and commercial purchaser (together with a single “catch-all” category titled “direct consumer purchases”).

INTERROGATORY NO. 33. Describe each product design difference perceptible to Defendant between the Subject Hookah labeled as AMY-018 and the Econo-MYA QT depicted in Exhibit 4.

INTERROGATORY NO. 34. Describe each product design difference perceptible to Defendant between the Subject Hookah labeled as Jinn and the MYA QT depicted in Exhibit 5.

INTERROGATORY NO. 35. Identify any and all documents responsive to the foregoing interrogatories or other Document Request issued by Plaintiff in this action which are lost or unavailable and identify the date(s) the loss or unavailability was first discovered, the person(s) who first discovered the loss or unavailability and the person(s) most knowledgeable about the contents of such lost or unavailable documents.

INTERROGATORY NO. 36. Identify all persons who participated in any way in the preparation of the answers or responses to these interrogatories and state specifically, with reference to interrogatory numbers, the area of participation of each such person (excluding only Applicant’s lawyers or their representatives).

INTERROGATORY NO. 37. Identify any study, research, focus group, testing or similar validation procedure employed by Defendant or any person or entity at Defendant’s request or on behalf of Defendant to determine the presence and/or absence of any confusion between Plaintiff’s Products and the Defendant’s Products when offered under the applied-for designations or AMY Brand generally.

DATED: January 20, 2015.

M. Keith Blankenship (VSB #70027)
Attorney for Plaintiff
Da Vinci’s Notebook, LLC
10302 Bristow Center Dr. No. 52
Bristow, VA 20136
Phone: (703) 581-9562
keith@dnotebook.com

Exhibit 1



Exhibit 2

Dabes Egyptian Imports
Neuburgerstr. 109
86167 Augsburg
Tel.: + 49 821 5439446

www.wasserpfeifentraumland.de

Art: Amy-014
VPE: 6 St/Karton

Art: Amy-012
VPE: 8 St/Karton

Art: Amy-015
VPE: 6 St/Karton

Art: Amy-010
VPE: 8 St/Karton

Art: Amy-018
VPE: 8 St/Karton

Art: Amy-011
VPE: 8 St/Karton

eigene mit 2

WASSERPF

A

Art:
Vf:
Ex:

Exhibit 3

Name: _____
 Anschrift: _____
 Telefon: _____
 Datum: _____

Dabes Egyptian Imports
 Neuburgerstr. 109
 86167 Augsburg
 Tel: +49 821 5439446



Preisliste / Bestellformular

- gilt für Intertabac 2011 -

Wasserpfeifen

DABES HOOKAH



















		Jinn	Bestellnr. qt-0003		Preis/ ab 1 Kart.	Preis /3 Kart.
	rot	schwarz				
	grün	amber			13,50 €	12,00 €
	violett	blau				
		Crazy Dots	Bestellnr. id760-1		Preis/ ab 1 Kart.	Preis /3 Kart.
		blau				
	auch mit Koffer	schwarz			15,00 €	12,50 €
		grün			20,00 €	15,50 €
		Crazy Dots Special Art	Bestellnr. id760a-1		Preis/ ab 1 Kart.	Preis /3 Kart.
		red white				
	amber	green blue			16,00 €	14,00 €
	blue white					
		Memory	Bestellnr. id580-1		Preis/ ab 1 Kart.	Preis /3 Kart.
		blue line				
	blue white	black green			28,00 €	26,00 €
	red white					
		Nargile	Bestellnr. id950/id950-2		Preis/ ab 1 Kart.	Preis /3 Kart.
		rot				
	blau	weiß			28,00 €	26,00 €
	schwarz					
		Joey	Bestellnr. id980		Preis/ ab 1 Kart.	Preis /3 Kart.
		schwarz				
		blau			28,00 €	26,00 €
		rot				
		Jamie	Bestellnr. id990		Preis/ ab 1 Kart.	Preis /3 Kart.
		blau				
		braun			28,00 €	26,00 €
		schwarz				
		Wallah	Bestellnr. egs-0058 n		Preis/ ab 1 Kart.	Preis /3 Kart.
		grün				
	blau	amber			13,50 €	12,50 €
	schwarz					
		Baghira	Bestellnr.		Preis/ ab 1 Kart.	Preis /3 Kart.
		auch mit Koffer				
	silber-blau	kupfer-rot	wp100-1		34,50 €	31,00 €
	silber-grün	kupfer-transparent	wp100-2		37,50 €	34,00 €

Exhibit 4



Exhibit 5



CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the forgoing PLAINTIFF'S FIRST SET OF INTERROGATORIES TO DEFENDANT DABES has been served on counsel for Applicant by mailing said copy via First Class Mail, postage prepaid to:

Paul D. Bianco
Fleit Gibbons Gutman Bongini & Bianco PL
21355 E Dixie Hwy Ste 115
Miami, Florida 33180-1244
United States

This 20th day of January 2015.

By : _____
M. Keith Blankenship

EXHIBIT “B”

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

MYA SARAY, LLC,

Plaintiff,

v.

DABES, IBRAHIM

Defendant.

Proceeding No. 91218280

**PLAINTIFF'S FIRST SET OF REQUESTS FOR PRODUCTION TO
DEFENDANT DABES**

Plaintiff Mya Saray, LLC ("Plaintiff"), by its attorneys and pursuant to Fed. R. Civ. P. 26 and 34, requests Defendant Ibrahim Dabes ("Dabes") to respond to the following Requests for Production within thirty (30) days from the date of service. Responsive documents should be produced at Da Vinci's Notebook, LLC at 10302 Bristow Center Dr., No. 52; Bristow, VA 20136. These Requests are continuing in nature, so as to require the filing of supplemental responses if additional or different information is obtained before trial.

DEFINITIONS

Unless the terms of a particular Request specifically indicate otherwise, the following definitions are applicable throughout these Requests and are incorporated into each specific Request for Production:

1. “Defendant” or “you” designated as the named Defendant in this action, Ibrahim Dabes, including his counsel, agents, representatives, and other persons acting on their behalf, as well as all businesses operated by him.

2. “Plaintiff” means/refers to Mya Saray, LLC, including each and every one of its divisions, subsidiaries, affiliates, predecessors and successors, and all of its current or former officers, employees, directors, representatives, contractors or agents, attorneys and all persons acting for or on its behalf.

3. The term “this action” means/refers to the litigation styled *Mya Saray, LLC v. Dabes, Ibrahim*, Proceeding No. 91218280, pending in the Trademark Trial and Appeal Board.

4. “Complaint” means the Notice of Opposition filed by Plaintiff in the litigation referenced in Paragraph 3 above.

5. “Person” or “persons” shall mean any natural person, sole proprietorship, corporation, partnership, limited partnership, limited liability company, association, group, organization, federal, state or local government or governmental entity and their parent entities, subsidiaries, affiliates, divisions, predecessors and successors in interest and present and former directors, officers, executives, partners, members, employees, agents or representatives.

6. The term “document” should be understood in its broadest permissible scope under the Federal Rules of Civil Procedure, and includes, by way of illustration and not limitation, the following, whether written, printed, reproduced by any process including recordings, or produced by hand, and whether or not claimed to be privileged or otherwise excludable from discovery: tapes;

notes; analyses; computer printouts; information maintained on computer disks or hard drives; correspondence; emails; video, audio, stenographic, magnetic, electronic digital or analog recordings or data; communications of any nature; recordings or transcriptions of voice mail messages; telegrams; letters; memoranda; notebooks of any character; summaries or records of personal conversations; diaries; routing slips or memoranda; reports; publications; photographs; minutes or records or tapes of meetings; transcripts of oral testimony or statements; reports and/or summaries of interviews; reports and/or summaries of investigations; agreements and contracts, including all modifications or revisions thereof; reports and/or summaries of negotiations; court papers; brochures; pamphlets; press releases; drafts, revisions or drafts; translations; tape recordings; documents, files or data download or retrieved from the Internet or from or through any online service or sever, and reports and dictation belts. Any document with any marks on any sheet or side thereof, including by way of illustration and not limitation, initials, stamped indicia, comments or notations of any character, not a part of the original text, or any reproduction thereof, is to be considered a separate document for purposes of this request. "Document" or "documents" include documents prepared by, for or at the direction of Defendant (or those acting or purporting to act on Defendant's behalf) and documents prepared by, for or at the direction of others.

7. "Communication" means any statement, question, command or interjection, whether made orally, visually, in writing, or by mechanical device, and whether for internal or external use.

8. “Asset” or “Property” refers to any interest in real or personal property. Real property means real estate. Personal Property means, but is not limited to, automobiles, furniture, antiques, cash value insurance, securities, bonds, patents and loans or contract rights owed to you. It also includes, but is not limited to, any interest in a pension, profit-sharing, stock option, stock grant, or retirement plan, whether vested or not, as well as bank accounts, credit union accounts, brokerage accounts, stock, bonds, mutual funds, Employee Savings Plans or any other rights or claims.

9. “Income” means money from any source, whether wages, self-employment, dividends, interest, capital gains, support, state aid, etc., whether or not taxable. It also includes overtime and bonuses.

10. “Investments” means such things as stocks, bonds options, precious metals or gems, antiques, collectibles or interests in businesses.

11. When referring to a natural person, “identify” means state the person’s full name, present or last known address and place of employment, home and business telephone numbers, and position of employment/job title. When referring to a company, “identify” means state the company’s full name, legal status by type and state (e.g., a Michigan Corporation), present or last known address, business telephone and facsimile numbers.

12. When referring to a document, “identify” means state the general nature and subject matter of the document; the exact name and title by which you refer to it; the author or the originator; each addressee; all individuals designated to receive or who otherwise have received a copy of the document, date and all serial

or identifying numbers, if any; the location and identity of the present custodian of each copy and last known address of each such custodian.

13. When referring to an oral statement or conversation, “identify” means state the date and place the oral statement or conversation was made or took place, the identity of each person who made, participated in, or heard any part of the oral statement or conversation, the substance of what was said by each person who made or participated in the oral statement or conversation, and the identity and present custodian of any written or any mechanical, electrical or computerized recording that recorded, summarized, or confirmed such oral statement or conversation.

14. As used herein:

- a. The terms “reflect,” “refer” or “relate to” are intended to have the broadest possible meaning, and include any logical or factual connection with the matters discussed.
- b. The term “or” means “and/or”.
- c. Any word written in the singular shall include the plural and vice versa.
- d. The term “any” means “each, any and all.”
- e. When appropriate, the use of the masculine also includes the feminine, and vice versa.
- f. Any other words used herein shall be defined according to standard American usage, as shown in a dictionary of the English language.

15. If any documents responsive to any request have been lost, mutilated or destroyed, so state and identify each such document, and state to which request the document would have been responsive.

16. If the Defendant lacks possession, custody or control of one or more documents that are responsive to a particular request, so state in response to such request.

17. If you contend that you are entitled to withhold any information requested herein on the basis of the attorney-client privilege, the work-product doctrine, or some other ground, for each item information so withheld, state the basis upon which you contend you are entitled to withhold the information.

SPECIFIC DEFINITIONS

1. Defendant. Defendant means not only Ibrahim Dabes but also his agents, officers, employees, representatives and attorneys, and any predecessors, subsidiaries, controlled, controlling and affiliated companies, and their agents, officers, employees, representatives and attorneys, to the fullest extent the context permits.
2. United States. The United States means the United States of America, and its territories and possessions.
3. AMY Brand. The AMY Brand includes the word “amy” applied by Defendant to a product or service, and all of the derivatives, including pictorial depictions, spoken versions, and logos including the word amy.

4. AMY Logo. The AMY Logo includes the brand that is the subject of U.S. Trademark Application No. 86,025,182
5. Logo Design Elements. The Logo Design Elements include those attributes of the AMY Logo other than the word “amy.”
6. Defendant Products. The Defendant Products include tobacco and smoking articles, including cigarettes, cigars, smoking pipes, and shishas.
7. MYA Trademarks. The term MYA Trademarks includes the trademarks described in the Notice of Opposition for this action, and includes U.S. Trademark Regs. No. 3031439; 3031440; 3684312; 3684311; 3840577; 3845276, as well as the Plaintiff’s mark as depicted in Exhibit 1 of this document, Plaintiff’s First Set of Requests for Production to Defendant Dabes.
8. MYA Products. MYA Products includes hookahs, components of hookahs, tobacco for hookah smoking, and accessories related to the use of hookahs.
9. Retailer. A Retailer includes an entity that vends, sells, leases, or provides a product directly to an end user of that product.
10. Distributor. A Distributor includes an entity vends, sells, leases, or provides products in quantity to Retailer.
11. Subject Hookahs. The Subject Hookahs include the hookah of Exhibit 2 labeled as “AMY-018” and the hookah of Exhibit 3 labeled as “Jinn.”

INSTRUCTIONS

These Requests for Production are addressed to Defendant Ibrahim Dabes and any and all of his agents, representatives, attorneys, and other persons acting on his behalf. If the requested information or documents are known by Defendant to exist but are not in the possession, custody or control of Defendant, his agents, representatives, attorneys, or other persons acting on his behalf, Defendant should so indicate and provide the name of the person or entity maintaining the documents or possessing the information. Each discovery request not only calls for the knowledge of the Defendant but also for all knowledge or documentation that is available to the Defendant through reasonable inquiry, including inquiry of your representatives and agents. If any documents responsive to any request have been lost, mutilated or destroyed, so state and identify each such document, and state to which request(s) the document would have been responsive. If the Defendant lacks possession, custody or control of one or more documents that are responsive to a particular request, so state in response to such request.

If you contend that you are entitled to withhold any information requested herein on the basis of the attorney-client privilege, the work-product doctrine, or some other ground, for each item of information so withheld, state the basis upon which you contend you are entitled to withhold the information. All responsive documents or tangible items should be sequentially paginated (a/k/a Bates Stamp

Numbered). These Requests for Production are continuing in nature so as to require you to provide supplemental information as set forth in F.R.C.P. 26(e).

DOCUMENT REQUESTS

REQUEST NO. 1: All documents that are identified in, or should have been identified in, or concern or relate to your answers to Plaintiff's First Set of Interrogatories to Defendant Dabes, including but not limited to, any documents you used or referred to in answering the Interrogatories.

REQUEST NO. 2: All licenses or other documents provided to you constituting permission from a government entity or subdivision – federal, state or local – to perform acts in commerce, including those related to buying/selling of tobacco and related products, permissions for importation of goods, zoning variances, etc.

REQUEST NO. 3 All documents that reflect or reference a sale of any Subject Hookah to any Distributor in the United States.

REQUEST NO. 4 All documents that reflect or reference a sale of any Subject Hookah to any Retailer in the United States.

REQUEST NO. 5 All documents that reflect or reference a sale of any of Defendants Products with the AMY Brand to any Distributor in the United States.

REQUEST NO. 6 All documents that reflect or reference a sale of any of Defendants Products with the AMY Brand to any Retailer in the United States.

REQUEST NO. 7 All documents that reflect or reference a sale of any of Defendants Products with the AMY Logo to any Distributor in the United States.

REQUEST NO. 8 All documents that reflect or reference a sale of any of Defendants Products with the AMY Logo to any Retailer in the United States.

REQUEST NO. 9 A physical specimen of each Subject Hookah.

REQUEST NO. 10 All documents and things that relate or refer to, or describe Defendant's inventory of hookah products physically located in the United States.

REQUEST NO. 11 All documents that relate or refer to, or describe, the locations for physical storage or warehousing of Defendant Products or packaging for Defendant Products in the United States.

REQUEST NO. 12 All documents that relate or refer to, or result from, the Defendant's importation of Defendant Products into the United States since the adoption of the AMY Brand or commercialization of the Subject Hookahs (whichever is earlier). This will include correspondence, invoices, and any other documents from manufacturers, importers, freight forwarders, customs agents, and others involved in the importation process.

REQUEST NO. 13 All documents and things that refer or relate to the purchase or ordering of packaging with the AMY Logo or AMY Brand.

REQUEST NO. 14 All documents and things that refer or relate to the creation, design, and appearance of the Subject Hookahs, including the creation design and appearance of alternatives.

REQUEST NO. 15 All documents and things that refer or relate to the creation, design, and appearance of the AMY Logo, including the creation design and appearance of alternatives.

REQUEST NO. 16 All documents and things that refer or relate to the creation, design, and appearance of the AMY Brand, including the creation design and appearance of alternatives.

REQUEST NO. 17 All documents and things relating or referring to design differences between the Subject Hookahs and any Plaintiff hookah.

REQUEST NO. 18 All documents and things that refer or relate to communications between the Defendant and between any person involved in the design, production, shipping, or storage of the Subject Hookahs.

REQUEST NO. 19 All documents and things that refer or relate to any complaint from any consumer, Retailer, or Distributor regarding any Subject Hookah or Defendant Product bearing the AMY Logo or AMY Brand.

REQUEST NO. 20 All documents and things related to the advertising, publicity, or marketing of the Subject Hookahs and Defendant Products.

REQUEST NO. 21 All documents and things related to the advertising, publicity, or marketing of the Subject Hookahs and Defendant Products in which the Defendant depicted either the AMY Brand or Subject Hookahs.

REQUEST NO. 22 All documents and things related to the advertising, publicity, or marketing of the Subject Hookahs and Defendant Products in which the Defendant depicted either the AMY Brand or Subject Hookahs in the United States.

REQUEST NO. 23 All invoices, media, schematics, proofs, drafts, and other documents related to the creation of the AMY Logo or the AMY Brand, including any trademark clearance opinions or contracts with third party branding consultants.

REQUEST NO. 24 All documents characterizing any belief by a third party that a MYA Product or a Defendant Product are from a common source (including, believing a MYA Product to be a Defendant Product, vice versa, believing that Plaintiff and Defendant share a common manufacturing source, etc.).

REQUEST NO. 25 All documents characterizing a design of a MYA Product or MYA Trademark.

REQUEST NO. 26 All documents and things related to the ability of a Retailer or Distributor or end-user to order the Subject Hookahs and Defendant Products (e.g., catalogues, product specifications, etc.).

REQUEST NO. 27 All documents and things that refer or relate to the submission, review, clearance, rejection, approval, or registration with any governmental agency or supplier of any aspect of the Subject Hookahs or the AMY Brand or AMY Logo.

REQUEST NO. 28 All documents and things that refer or relate to the costs of manufacturing, acquiring parts and materials for, and Defendant's purchase (if any) of the Subject Hookahs.

REQUEST NO. 29 All documents and things relating to visits and communications to any store, retail outlet, or other business engaged in the sale of Defendant Products in the United States visited by any employee, representative, agent, official, executive and/or director of the Defendant for purposes relating to creating or continuing sales of Defendant Products.

REQUEST NO. 30 All Documents and things that describe, illustrate, or depict Your corporate or organizational structure, or any group assignment, including, but not limited to, organizational charts.

REQUEST NO. 31 Documents and things concerning your document retention policies.

REQUEST NO. 32 All documents constituting or concerning reports prepared by any expert whom you expect to call at trial, including draft reports.

REQUEST NO. 33 All documents provided by you to any expert witness retained by you for this action.

REQUEST NO. 34 Any and all statements taken of any person regarding any aspect of Plaintiff's claims or the allegations in this action or any defense to those claims or allegations.

REQUEST NO. 35 All documents that relate to, reflect, evidence, or constitute the factual and/or legal explanation, ground, or rationale for your First Affirmative Defense (Failure to State a Claim).

REQUEST NO. 36 All documents that relate to, reflect, evidence, or constitute the factual and/or legal explanation, ground, or rationale for your Second Affirmative Defense (Absence of Likelihood of Confusion).

REQUEST NO. 37 All documents that relate to, reflect, evidence, or constitute the factual and/or legal explanation, ground, or rationale for your Third Affirmative Defense (Lack of Damages).

REQUEST NO. 38 All documents that relate to, reflect, evidence, or constitute the factual and/or legal explanation, ground, or rationale for your Fourth Affirmative Defense (Estoppel).

REQUEST NO. 39 All documents that relate to, reflect, evidence, or constitute the factual and/or legal explanation, ground, or rationale for your Fifth Affirmative Defense (Laches).

REQUEST NO. 40 All documents that relate to, reflect, evidence, or constitute the factual and/or legal explanation, ground, or rationale for your Sixth Affirmative Defense (Acquiescence).

DATED: January 20, 2015.

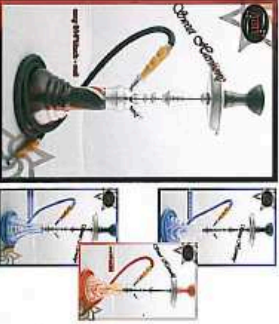
M. Keith Blankenship (VSB #70027)
Attorney for Plaintiff
Da Vinci's Notebook, LLC
10302 Bristow Center Dr. No. 52
Bristow, VA 20136
Phone: (703) 581-9562
keith@dnotebook.com

Exhibit 1




Exhibit 2

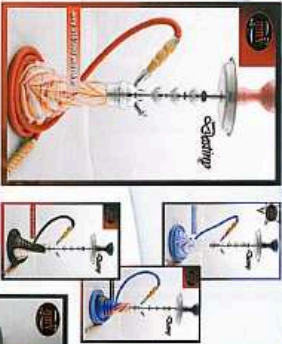
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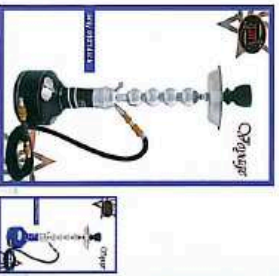
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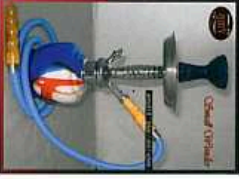
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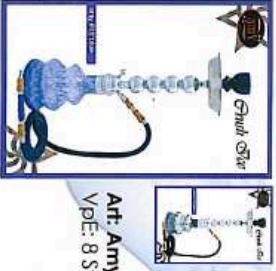
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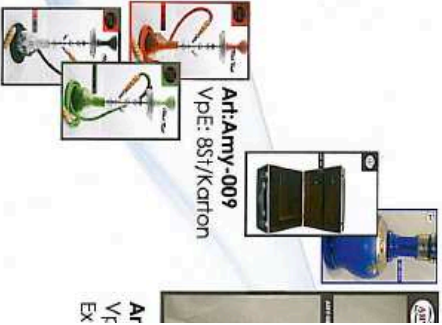
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Art: Amy-011
VPE: 8 St/Karton



Art: Amy-009
VPE: 8 St/Karton



WASSERP

eigene mit 2

Dabes Egyptian Imports
Neuburgerstr. 109
86167 Augsburg
Tel.: + 49 821 5439446

www.wasserpfeifentraumland.de

Exhibit 3

Name: _____
 Anschrift: _____
 Telefon: _____
 Datum: _____

Dabes Egyptian Imports
 Neuburgerstr. 109
 86167 Augsburg
 Tel: +49 821 5439446



Preisliste / Bestellformular

- gilt für Intertabac 2011 -

Wasserpfeifen

DABES HOOKAH



















		Jinn	Bestellnr. qt-0003		Preis/ ab 1 Kart.	Preis /3 Kart.
	rot	schwarz				
	grün	amber			13,50 €	12,00 €
	violett	blau				
		Crazy Dots	Bestellnr. id760-1		Preis/ ab 1 Kart.	Preis /3 Kart.
		blau				
	auch mit Koffer	schwarz			15,00 €	12,50 €
		grün			20,00 €	15,50 €
		Crazy Dots Special Art	Bestellnr. id760a-1		Preis/ ab 1 Kart.	Preis /3 Kart.
		amber				
	blue white	red white			16,00 €	14,00 €
		green blue				
		Memory	Bestellnr. id580-1		Preis/ ab 1 Kart.	Preis /3 Kart.
	blue white					
	red white	blue line			28,00 €	26,00 €
	red line	black green				
		Nargile	Bestellnr. id950/id950-2		Preis/ ab 1 Kart.	Preis /3 Kart.
	blau					
	schwarz	rot			28,00 €	26,00 €
	gelb	weiß				
		Joey	Bestellnr. id980		Preis/ ab 1 Kart.	Preis /3 Kart.
		schwarz				
		blau			28,00 €	26,00 €
		rot				
		Jamie	Bestellnr. id990		Preis/ ab 1 Kart.	Preis /3 Kart.
		blau				
		braun			28,00 €	26,00 €
		schwarz				
		Wallah	Bestellnr. egs-0058 n		Preis/ ab 1 Kart.	Preis /3 Kart.
	blau	grün				
	schwarz	amber			13,50 €	12,50 €
	rot					
		Baghira	Bestellnr.		Preis/ ab 1 Kart.	Preis /3 Kart.
		auch mit Koffer				
	silber-blau	kupfer-rot	wp100-1		34,50 €	31,00 €
	silber-grün	kupfer-transparent	wp100-2		37,50 €	34,00 €

Exhibit 4



Exhibit 5



CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the forgoing PLAINTIFF'S FIRST SET OF REQUESTS FOR PRODUCTION TO DEFENDANT DABES has been served on counsel for Applicant by mailing said copy via First Class Mail, postage prepaid to:

Paul D. Bianco
Fleit Gibbons Gutman Bongini & Bianco PL
21355 E Dixie Hwy Ste 115
Miami, Florida 33180-1244
United States

This 20th day of January 2015.

By : _____
M. Keith Blankenship

EXHIBIT “C”

Redacted in its entirety for public record.

EXHIBIT “D”

Lourdes Perez

From: P 1#hlk#Eolqnhqvks#PnhlkC gqrwherrn1frp A
Sent: P rggd|/Dsu15:/#5348#4@;#BP
To: Sdxq#ldqfr
Cc: Orxughv#Shuh}
Subject: Uh#G lfryhu|#Uhvsrcvhw

Follow Up Flag: Irørz #ks
Flag Status: Frp sdwhg

Paul,

Unless otherwise directed, I will telephone you at 4:00pm EST on Tuesday.

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Best Regards,

M. Keith Blankenship
Da Vinci's Notebook, LLC
10302 Bristow Center Dr.
No. 52

Bristow, VA 20136
703-581-9562
keith@dnotebook.com

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Cc: Lourdes Perez
Subject: Re: Discovery Responses

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EXHIBIT “E”

Lourdes Perez

From: Sdx#Eldqfr
Sent: Iu|d|/P d|/48/5348#7-3;#SP
To: P 1#Nhlk#Eolqnhqvks
Cc: Orxughv#Shuh}
Subject: UH#G lfryhu|#Jhvsrqvhv

Follow Up Flag: Irørz #ks
Flag Status: Frp sdwhg

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From: Paul Bianco
Sent: Tuesday, April 28, 2015 2:49 PM
To: 'M. Keith Blankenship'
Cc: Lourdes Perez
Subject: RE: Discovery Responses

Thanks.



Paul Bianco Ph.D.
Registered Patent Attorney, U.S. Patent & Trademark Office
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From: M. Keith Blankenship [<mailto:keith@dnotebook.com>]

Sent: Tuesday, April 28, 2015 2:19 PM

To: Paul Bianco

Cc: Lourdes Perez

Subject: Re: Discovery Responses

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Best Regards,

M. Keith Blankenship
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EXHIBIT “F”

Lourdes Perez

From: P 1#nhlk#Eolqnhqvkls#P nhlkC gqrwherrn1frp A
Sent: Iu|gd|/P d|#8/#5348#7-53#5P
To: Sdx#Eldqfr
Cc: Orxughv#Shuh}
Subject: Uh#G lfryhu|#Jhvsrqvhv

Follow Up Flag: Irørz #ks
Flag Status: Frp sçwhg

Hi Paul,

I don't recall being tasked with sending over any description of deficiencies. Other than our meeting agenda, and our telephonic discussion, I'm not sure that there is more to add. I did indicate that I would consider sending over support for some of my discovery requests. I don't believe that we indicated that this was a contingency. Incidentally, I don't think that there is anything special to provide in the way of caselaw supporting discovery into the relevance of products associated with a trademark and the ability of a party to physically examine a product.

Although we set no fixed dates whereby you would make a decision on whether you would provide updated disclosure to me, I had expected something by this point. It has been 2.5 weeks. I can appreciate that your client is in Germany, but most of the concerns that I had for you related to legal positions. Do you have any updates, documents, answers to provide at this time?

Best Regards,

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Da Vinci's Notebook, LLC
10302 Bristow Center Dr.
No. 52
Bristow, VA 20136
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keith@dnotebook.com

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From: Paul Bianco
Sent: Tuesday, April 28, 2015 2:49 PM
To: 'M. Keith Blankenship'
Cc: Lourdes Perez
Subject: RE: Discovery Responses

Thanks.

<image002.png>
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EXHIBIT “G”

Redacted in its entirety for public record.

EXHIBIT “H”

ESTTA Tracking number: **ESTTA674814**

Filing date: **05/28/2015**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91218280
Party	Plaintiff Mya Saray, LLC
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Submission	Motion to Compel Discovery
Filer's Name	M. Keith Blankenship
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Signature	/M. Keith Blankenship/
Date	05/28/2015
Attachments	Motion to Compel_DNMYA-0051_Motion.pdf(63622 bytes) Motion to Compel_DNMYA-0051_Brief_FINAL_REDACTED.pdf(878538 bytes) DNMYA-0051_Exhibits_filled_REDACTED.pdf(4838569 bytes)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the Matter of Application Serial No. 86/025,182
Published in the Official Gazette (Trademarks) on May 13, 2014.

MYA SARAY, LLC,

Plaintiff,

v.

DABES, IBRAHIM

Defendant.

Opposition No. 91218280

PLAINTIFF'S FIRST MOTION TO COMPEL

Pursuant to Federal Rules of Civil Procedure 33, 34, and 37, Cancellation-Plaintiff Mya Saray, LLC ("Plaintiff") respectfully moves this Court for an Order compelling Registrant-Defendant ("Defendant") Dabes to provide full and accurate responses to Plaintiff's First Set of Interrogatories and Requests for Production. Plaintiff certifies that it has made a good faith effort, by telephonic conference and correspondence, to resolve with the Defendant the issues presented in the motion and has been unable to reach agreement. In support of its Motion, Plaintiff refers the Court to Plaintiff's accompanying Brief of Law in Support of its First Motion to Compel.

Plaintiff request that this Board:

1. ORDER Defendant to provide full and accurate responses to Plaintiff's First Set of Interrogatories and Requests for Production generally;

2. STRIKE Defendant's Objections to Plaintiff's First Set of Interrogatories No. 1-4, 7-10, 12, 14, 16-18, 24-25, 27-28, 30-35, and 37 and Plaintiff's First Set of Requests for Production No. 3-9, 13-28, and 30-31;

3. ORDER Defendant to reclassify the categories of his discovery disclosures and answers into appropriate categories pursuant to the standard protective order;

4. ORDER Defendant to correlate which documents are responsive to specific interrogatories and document requests;

5. RESET discovery dates to ameliorate the effects of Defendant's improper discovery production; and

6. PROVIDE such other relief as this Board may deem just and proper.

DATED: 5/28/2015

By: /M. Keith Blankenship/
Attorney for Petitioner
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CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the forgoing FIRST MOTION TO COMPEL has been served on counsel for Applicant by mailing said copy via First Class Mail, postage prepaid to:

Paul D. Bianco
Fleit Gibbons Gutman Bongini & Bianco PL
21355 E Dixie Hwy Ste 115
Miami, Florida 33180-1244
United States

This 28th day of May 2015.

By : 
M. Keith Blankenship

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PLAINTIFF'S BRIEF IN SUPPORT OF ITS FIRST MOTION TO COMPEL

INTRODUCTION AND FACTUAL BACKGROUND

Cancellation-Plaintiff Mya Saray, LLC (“Mya Saray”) is a premier hookah manufacturing and distribution company. Cancellation-Defendant Ibrahim Dabes (“Dabes”) operates a German hookah distribution company that recently decided to apply the term AMY to its hookahs and hookah accessories. Mya Saray believes that Dabes’ use of AMY generally and as particularly as stylized causes confusion with Mya Saray’s well-known MYA brand of hookahs and hookah accessories.

Mya Saray is not so enamored with its present litigation position to believe that a pure comparison between its mark, MYA, and Dabes’ designation AMY (as stylized) will propel its case unaided through final judgment. Fortunately, the issue before this Board demands an analysis of many factors probative of the story of the marketplace in which MYA and AMY compete, presently or prospectively. *See In re E.I. du Pont de Nemours & Co.*, 476 F.2d 1357 (CCPA 1973)(lists relevant factors). A market’s setting can provide context that turns a plausible story of likelihood of confusion into a convincing one; and a convincing story into a damning one. By objecting to discovery ostensibly to all *DuPont* factors other than direct comparison of the designations, Dabes’ present discovery tactics seem calculated to block this story.

Mya Saray owns powerful trademarks in the hookah and hookah tobacco industry. Mya Saray is old, respected, and universal; these are the traits that an up-and-comer seeks to associate with its products. Mya Saray’s words and phrases are often slavishly copied. *See e.g., Mya Saray v. Al-Amir, Inc, et. al.*, 831 F.Supp.2d 922 (E.D.Va 2011)(Counterfeiter held to counterfeit Mya Saray’s word marks and product designs). Mya Saray’s products are often slavishly copied. *See e.g., Mya Saray v. Zahrah Corp., et. al.*, Civil Action No. 8:13-cv-01828 (C.D.Ca 2013)(Permanent injunction against copyists of product designs and patent infringers).

Free riders are rarely only copyists; free riders can blend duplicated brands and products with non-duplicates in a symbiotic way. Both the *Zahrah* and *Al-Amir* case mentioned include companies that intermingled copied products and brands with original products and brands to increase the consumer's exposure to and purchase of the latter. Counterfeiters are common for marquee brands like MYA, and Mya Saray seeks the opportunity to show this Board that the AMY name may just be the latest attempt to free ride off of Mya Saray.

Free riders need not be heavy-handed. AMY and AMY (as stylized) are already close enough to MYA (and its stylized sibling marks) to confuse consumers. If Mya Saray can successfully show this Board that Dabes selected AMY and its accompanying stylizations to confuse consumers, then this would be convincing evidence of likelihood of confusion. This evidence may be drawn from the products supplied by Dabes. However, Dabes blocked access to discovery of Dabes' products, excepting production of one catalogue. Evidence of likelihood of confusion may be drawn from instances of actual confusion. Dabes blocked access to discovery of Dabes' records detailing instances of actual confusion. Evidence of likelihood of confusion may be drawn from records of the design of a product identical to one of Mya Saray's products – or that there were no design documents at all, potentially because Dabes purchased products from an existing pipeline of counterfeits. There are other obstructions to rightful discovery, as well as other peculiarities such as a blanket application of “commercially sensitive” to all discovery production – *even encompassing answers of “no” or “none.”* Furthermore, if Dabes' discovery were taken at face value, it would have this Board believe that Dabes has not one drop of correspondence with third parties or internally.

To aid the reader, an index of discovery challenged, its subject matter, and where it is discussed in this brief is presented in Exhibit 3. Mya Saray's original discovery requests are available as Exhibits 4-5.

ARGUMENT

I. DEFENDANT'S DISCOVERY RESPONSES ARE UNRESPONSIVE AND ITS OBJECTIONS SEEK TO IMPERMISSIBLY NARROW THE SCOPE OF DISCOVERY.

A. Standards of Law

1. Overly Broad

Rule 34 provides that a request must describe with reasonable particularity each item or category of items to be inspected. Fed.R.Civ.P. 34(b)(1)(A). Courts may find that a request is overly broad when it is couched in such broad language as to make deciding which of numerous documents may conceivably fall within its scope to be an unreasonably arduous task. *General Elec. Capital Corp. v. Lear Corp.*, 215 F.R.D. 637, 641 (D.Kan. 2003). A party resisting discovery on the basis that a request is overly broad has the burden to support its objection, unless the request is overly broad on its face. *Id.* at 640. "Mere recitation of the familiar litany that an interrogatory or a document production request is 'overly broad, burdensome, oppressive and irrelevant' will not suffice." *Momah v. Albert Einstein Medical Center*, 164 F.R.D. 412, 417 (E.D.Pa. 1996)(citations omitted).

2. Ambiguity

Rule 34 states that a document request "must describe with reasonable particularity each item or category of items to be inspected." Fed.R.Civ.P. 34(b)(1)(A). The test for reasonable particularity is whether the request places the party upon reasonable notice of what is called for and what is not. *Kidwiler v. Progressive Paloverde Ins. Co.*, 192 F.R.D. 193, 202 (N.D.W.V.2000). Therefore, the party requesting the production of documents must provide sufficient information to enable the party to whom the request is directed to identify responsive documents. *Id.* (citing *Parsons v. Jefferson-Pilot Corp.*, 141 F.R.D. 408, 412 (M.D.N.C.1992)). A party that objects to discovery as vague or ambiguous has the burden to

show such vagueness or ambiguity. *Payless Shoesource Worldwide, Inc. v. Target Corp.*, 237 F.R.D. 666, 674 (D.Kan. 2006). A party responding to discovery requests should exercise reason and common sense to attribute ordinary definitions to terms and phrases, and if necessary to clarify its answers, and may include any reasonable definition of the term or phrase at issue. *Id.* at 674-75. A respondent that does not seek clarification or indicate the unclear aspects of the requests waives its objection. *DL v. District of Columbia*, 251 F.R.D. 38, 47 (D.D.C. 2008).

3. Relevance

Discovery under the Federal Rules of Civil Procedure is broad in scope and freely permitted. *Carefirst Of Maryland, Inc. v. Carefirst Pregnancy Centers, Inc.*, 334 F.3d 390, 402 (4th Cir. 2003). Discovery need not be confined to matters of admissible evidence but may encompass that which “appears reasonably calculated to lead to the discovery of admissible evidence.” Fed.R.Civ.P. 26(b)(1); *Marker v. Union Fidelity Life Ins. Co.*, 125 F.R.D. 121, 124 (M.D.N.C. 1989). The scope of discovery must be broad in order to provide both sides with all the information necessary for proper and full litigation of all the relevant issues, as well as to eliminate surprise and to facilitate settlement. *Hickman v. Taylor*, 329 U.S. 495, 507-508 (1947).

Rule 26(b)(1) provides, in part, that discovery may be obtained “regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action.” *Buffington v. Gillette Co.*, 101 F.R.D. 400, 401 (D.C.Okl. 1980). Relevancy is broadly construed at the discovery stage of litigation and a request for discovery should be considered relevant if there is any possibility that the information sought may be relevant to the subject matter of the action. *Id.*; *Miller v. Doctor's General Hospital*, 76 F.R.D. 136 (W.D.Okl. 1977); *Biliske v. American Live Stock Insurance Co.*, 73 F.R.D. 124 (W.D.Okl. 1977); *Detweiler Bros. Inc. v. John Graham & Co.*, 412 F.Supp. 416 (E.D.Wash. 1976); *U.S. v. Int'l Business Machines Corp.*, 66 F.R.D. 215

(S.D.N.Y.1974). Discovery rules are to be accorded a broad and liberal treatment. *Schlagenhauf v. Holder*, 379 U.S. 104 (1964); *Hickman v. Taylor*, 329 U.S. 495 (1947); *Barnett v. Sears, Roebuck and Co.*, 80 F.R.D. 662 (W.D.Okl. 1978). Discovery should ordinarily be allowed under the concept of relevancy unless it is clear that the information sought can have no possible bearing upon the subject matter of the action. *Miller v. Doctor's General Hospital*, *supra*; *Marshall v. Electric Hose and Rubber Co.*, 68 F.R.D. 287 (D.Del. 1975).

4. Interrogatory Answers

Each interrogatory must be answered separately and fully in writing under oath. In the interest of narrowing the issues and ascertaining the facts relevant thereto, a court should not permit answers to interrogatories that are incomplete, inexplicit, and unresponsive. *Miller v. Doctor's General Hospital*, 76 F.R.D. 136, 140 (D.C.Okl. 1977). If the answering party lacks necessary information to make a full, fair and specific answer to an interrogatory, it should so state under oath and should set forth in detail the efforts made to obtain the information. *Int'l Fertilizer & Chemical Corp. v. Brasileiro*, 21 F.R.D. 193, 194 (S.D.N.Y. 1957) (*citing* 3 Moore, Federal Practice, Par. 33.26 at p. 2331 (2d ed. 1950)). Depending upon the circumstances, "evasive or incomplete answers are tantamount to no answer at all." *Cf. Airtex Corp. v. Shelley Radiant Ceiling Co.*, 536 F.2d 145, 155 (7th Cir. 1976); *see also Minnesota Mining & Mfg. Co. v. Eco Chem, Inc.*, 757 F.2d 1256, 1260 (Fed.Cir. 1985) (rejecting the argument that interrogatory answers stating "unable to respond" was a response by which the party could avoid the sanction provisions of Rule 37(d)). Furthermore, a party may not make unilateral decisions to narrow the scope of discovery from the scope defined by the seeker of discovery. *Wagner v. Dryvit Systems, Inc.*, 208 F.R.D. 606, 611 (D.Neb. 2001) (*citing Laker Airways Ltd. v. Pan American World Airways*, 103 F.R.D. 42, 45-6 (D.D.C. 1984)).

B. Defendant's Discovery Objections and Answers Are Not Supportable.**1. The Rationale and Documents Relating to Dabes' Selection of Its AMY Logo (as stylized) is Appropriate Discovery.**

Mya Saray asked for answers and documents related to Dabes' selection of the AMY (as stylized) mark. Subject matter for this topic is covered in Interrogatory No. 1 (Exhibit 1, pg. 2) and Document Request No. 15 (Exhibit 2, pg. 6). Dabes objected to the relevance of the Interrogatory and Document Request, and without further explanation objected to the Document Request as overly broad and unduly burdensome.

Dabes' intent in selecting AMY is at the focus of this litigation. This board may consider any factor probative of likelihood of confusion, including intent. *DuPont*, 476 F.2d at 1361 and see *Nautilus Group, Inc. v. ICON Health and Fitness, Inc.*, 372 F.3d 1330, 1334-35 (Fed. Cir. 2004)(Intent is probative of likelihood of confusion). Wrongful intent is "easy to infer where [a] defendant knew of the plaintiff's mark, had freedom to choose any mark, and 'just happened' to choose a mark confusingly similar to plaintiff's mark." *Dreyfus Fund, Inc. v. Royal Bank of Canada*, 525 F. Supp. 1108, 1121 (S.D.N.Y. 1981) citing 2 J. McCarthy, *Trademarks and Unfair Competition* § 23:33, at 107 (1973). When a defendant has freedom of choice with full knowledge of a senior user's mark, a court "can readily read into a defendant's choice of a confusingly similar mark the intent to get a free ride upon the reputation of a well known mark." *Id.* This topic is relevant to this proceeding, and Dabes fails to explain any bases for his other objections.

Although Dabes answers the Interrogatory with a facially satisfactory response, he should be made to answer the Interrogatory without objection or reserve information.

2. Discovery of the Rationale and Documents Relating to Dabes' Selection of Its AMY Logo (as stylized) Over Other Alternatives is Appropriate Discovery.

Mya Saray asked for answers and documents related to Dabes' selection of the AMY (as stylized) mark over other trademarks. Subject matter for this topic is covered in Interrogatory No. 2 (Exhibit 1, pg. 3) and Document Request No. 15 and 23 (Exhibit 2, pgs. 6 and 8). Dabes objects on the basis that the information sought is not relevant to the subject matter of the pending proceeding. This topic is relevant for the same reasons as Interrogatory No. 1, discussed in Subsection I(B)(1). The difference here is that Mya Saray now seeks the specific alternatives that may have been rejected. If there was only one, or if the alternatives were all variations of A-M-Y, then certainly Dabes' intent would be more questionable.

Dabes does not render any satisfactory response at all. Instead, he unilaterally narrows the scope of the question and simply repeats his answer to Interrogatory No. 1. Dabes produced no responsive documents.

3. Discovery of Companion Brands Associated with Dabes' Use of its AMY Brand is Appropriate Discovery.

Mya Saray asked for answers and documents related to Dabes' use of other brands in connection with its products, as identified in his trademark application. Subject matter for this topic is covered in Interrogatories No. 3-4 (Exhibit 1, pg. 3). Interrogatory No. 4 goes into greater detail when it further asks the characteristics of purchasers and manufacturing source of products provided under the other Dabes brands. Dabes objects to Interrogatories No. 3 and 4 on the basis that the information sought is not relevant to the subject matter of the pending proceeding, and then to Interrogatory 4 on the basis of being vague, ambiguous, and unduly burdensome.

A factor of likelihood of confusion is the proximity of goods. *DuPont*, 476 F.2d at 1361. Dabes admittedly uses at least two brands. It is common that discrete brands represent goods with different qualities. Mya Saray's MYA brand is a high-end brand; and if Dabes uses his AMY

brand to differentiate one set of products from other products offered under his original Dabes brand, then the difference may be material. *See e.g., Cuisinarts, Inc. v. John Boos & Co.*, 622 F.Supp. 1168 (S.D.N.Y. 1985)(The fact that plaintiff and defendant used similar designations for high-end brands weighed in favor of likelihood of confusion).

If Dabes did indeed fully answer Interrogatory No. 3 without reservation of information, then Mya Saray considers this answer fairly answered. However, there is no attempt to describe in response to Interrogatory No. 4 the characteristics of product quality or prospective purchasers of the alternative brands cited in the Dabes catalogue (which appears to be the only responsive document).

4. The Identification of Dabes' U.S. Distributors and Retailers of Its Products and Its Employees Is Appropriately Discoverable.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

¹ Mya Saray, whose U.S. retailer list is immense, empathizes with producing parties asked to produce mass quantities of information; consequently, Mya Saray asked that Dabes reveal no more than its 20 highest volume retailers, to the extent that the number exceeded 20. (Exhibit 1, pg. 5)

The image consists of a single, uniform black rectangle covering the entire area. There are no discernible features, text, or patterns.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

5. Hookahs Sold Under The AMY Brand and Their Attributes Are Proper Subjects of Discovery.

Mya Saray asked Dabes to identify the hookahs sold under its AMY brand, including internal names, code names, marketing names, etc., as well as each hookah's first date of sale – and its first date of sale under the AMY brand, if different. Subject matter for this topic is covered in Interrogatory No. 8 (Exhibit 1, pg. 5). Dabes objects on the basis that the information sought is not relevant to the subject matter of the pending proceeding, and further that it is unduly burdensome.

In a curious objection, Dabes declared that the names and attributes of specific hookahs sold under the AMY Brand are irrelevant to the present action. Mya Saray, as does any other trademark litigant, has some investigation ahead of it. A starting point of the investigation is

² In an interesting contrast, Dabes objects to Mya Saray learning of its distributors and retailers in the U.S. for its tobacco products generally (when those specifically branded with AMY (as stylized) are not present), yet also objects to Mya Saray learning any information about his products provided under AMY (as stylized) elsewhere. *See e.g.*, Interrogatories No. 8 and 9 (Exhibit 1, pg. 5) (“Applicant objects to portions of this interrogatory that relate to goods sold outside the U.S.”). Thus Dabes has neatly boxed out Mya Saray from information about the where the products *will be sold* in the U.S, and where they *are sold* elsewhere.

the attributes of the products sold under Dabes trademarks, and Mya Saray needs to know the product names. Once the product names are established Mya Saray can determine such facts as:

1. The price points of the products;
2. The quality attributes of the products;
3. Whether the products have attributes (e.g., use of MYA proprietary coloring) that aid in further confusing consumers into believing that AMY brand products are MYA brand products.
4. The location of the products; and
5. Criticism of the products;

This comprises a simple list of the information that can be obtained from knowledge of the specific products utilized by Dabes. Furthermore, Mya Saray intends to prove that Dabes is a habitual free rider of Mya Saray's goodwill. The comparison of Dabes product sales history, in the *very abbreviated* form requested by Mya Saray, may demonstrate that he achieves greater sales success with those products that imitate those of Mya Saray.

6. Distribution Pricing and MSRP are Appropriately Discoverable.

Mya Saray asked Dabes to identify the Manufacturer's Suggested Retail Price and distribution price for its hookahs. Subject matter for this topic is covered in Interrogatory No. 9 (Exhibit 1, pg. 5). Dabes objects on the basis that the information sought is not relevant to the subject matter of the pending proceeding, and further that it is unduly burdensome.

The price point of an infringing product is always relevant to a likelihood of confusion analysis. Once again, Dabes cites the unduly burdensome nature of Mya Saray's request for information without bothering to explain the basis. Here, Dabes takes exception to Mya Saray's request for the distribution prices and MSRP of its hookahs. Mya Saray is puzzled as to how this is burdensome, or even unduly so; it is a standard practice in the distribution of any good to provide an MSRP to the retailer and have (and track) standard distribution pricing.

7. U.S. Sales Quantity of Dabes' Hookahs is Appropriately Discoverable.

Mya Saray asked Dabes to provide the sales quantities of its hookahs by year. Subject matter for this topic is covered in Interrogatory No. 10 (Exhibit 1, pgs. 5-6). Dabes objects on the basis that the information sought is not relevant to the subject matter of the pending proceeding, and further that it is unduly burdensome.

Again Dabes objects to relevance and burden without the slightest explanation. With modern bookkeeping programs, a suitable report is seemingly a few keystrokes away. Dabes' abbreviated sales history of his hookahs, provides circumstantial evidence of his intent, and indicates his level of success in copying Mya Saray. Dabes purports to answer this question via document production, but again, Mya Saray can find no such documents. Again, Dabes provides no Bates reference

8. The Extent of Trademark Search by Dabes' May Be Appropriately Discoverable.

Mya Saray asked Dabes to describe the extent to which it searched for trademarks that might impede its use of AMY (as stylized). Subject matter for this topic is covered in Interrogatory No. 12 (Exhibit 1, pg. 6). Dabes objects based on relevancy and privilege and/or attorney work product. Although Mya Saray understands that the substance of a report may be subject to privilege, that privilege is waived if Dabes intends to use the substance of the report as a defense in this action. The relevance of any report or search, however, is unquestionable. Mya Saray requests an instruction from this Board that if Dabes intends to use any search of existing trademarks, that he disclose its contents in discovery.

9. Information Received by Dabes Referring to or Inquiring about Mya Saray is Properly Discoverable.

[illegible]

10. Trade Shows Attended by Dabes Where Dabes Marketed His Products is Properly Discoverable and His U.S. Visits to Retailers/Distributors.

Mya Saray asked Dabes to identify the trade shows that he has attended within the last four years where he marketed the products of his trademark application, and any retailers or distributors in the U.S. that he has visited. Subject matter for this topic is covered in Interrogatory No. 17 (Exhibit 1, pg. 8) and Document Request No. 29 (Exhibit 2, pg. 10). Dabes

objects to the Document Request and Interrogatory on the basis that the information sought is not relevant to the subject matter of the pending proceeding, and further to the Document Request based on breadth and burden. The channels of trade and media through which a defendant markets its products is not only relevant, but a prominent factor of likelihood of infringement. If by his objection, Dabes provides an incomplete answer he will work a substantial injustice in this litigation. *See Freedom Card, Inc. v. JPMorgan Chase & Co.*, 432 F.3d 463, 471 (3d Cir.2005)(Whether goods are marketed through the same channels of trade and advertised through the same media is probative of likelihood of confusion.). Dabes answered; however, the objections should nonetheless be struck to ensure a complete reply.

11. Instances and Reports of Actual Confusion Known to Dabes Are Properly Discoverable.

A series of 14 horizontal black bars of varying lengths, representing a redacted list or document. The bars are stacked vertically, with the first bar being the longest and the last bar being the shortest. The lengths of the bars vary significantly, with some being nearly full-width and others being much shorter, suggesting a list of items of different lengths or a document with varying line lengths. The bars are solid black and have no text or other markings on them.

[REDACTED]

[REDACTED]

[REDACTED]

12. The Nature of Dabes' Trade Channels is Properly Discoverable.

Mya Saray asks Dabes to describe the trade channels of his AMY brand products identified in his trademark application. Subject matter for this topic is covered in Interrogatory No. 24 (Exhibit 1, pg. 11-12). Dabes objects on the basis that the information sought is not relevant to the subject matter of the pending proceeding, and further that it is unduly burdensome.

The channels of trade and media through which a defendant markets its products is not only relevant, but a prominent factor of likelihood of infringement. If by his objection, Dabes provides an incomplete answer he will work a substantial injustice in this litigation. "The similarity or dissimilarity of established, likely-to-continue trade channels" is a factor in any analysis of likelihood of confusion. *DuPont*, 476 F.2d at 1361. Dabes answered, but again, did so under reservation of objection.

13. Dabes' Sales and Advertising Literature is Properly Discoverable.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

14. Dabes' Sales and Advertising Budget is Properly Discoverable.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

15. Dabes' Sales for Each Product Sold under His AMY Brand is Properly Discoverable.

Mya Saray asks Dabes to list by product his sales in the United States under his AMY brand. Subject matter for this topic is covered in Interrogatory No. 28 (Exhibit 1, pgs. 12-13). Dabes objects on the basis that the information sought is not relevant to the subject matter of the pending proceeding, and further that it is unduly burdensome and vague.

Dabes states that the Interrogatory is vague, but fails to explain which part is vague. Dabes uses product identifiers approved by this U.S. Patent and Trademark Office and the terms "sales" and "by year" and "United States" seem facially self-explanatory. Furthermore, Dabes states the Interrogatory is unduly burdensome, but this again seems like one of the questions that can be answered by most bookkeeping programs with a few keystrokes. In

16. Dabes' Use of Counterfeit Hookahs is Strongly Indicative of his Bad Intent and is Properly Discoverable.

The image consists of a single, uniform black rectangle covering the entire area. There are no discernible features, text, or patterns.

[REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

17. Dabes' Lost and Unavailable Documents are Properly Discoverable.

When in Interrogatory No. 35, (Exhibit 1, pg. 15) Mya Saray requested the identity of lost documents or unavailable documents that would have otherwise have been produced in response to one of the other Interrogatories, Dabes objected generally, that they might be the basis of work product and/or attorney-client privilege. The general objections should be stricken for reasons described elsewhere in this brief. The objections as to work product and/or attorney-client privilege on the other hand are perplexing. Defendant should be made to explain why the documents that it does not have cannot be viewed for reasons of work product or attorney-client privilege.

³ Specifically the QT hookah. The QT hookah has achieved such sales prominence that it supports its own trademark for its product configuration. See U.S. Trademark Reg. No. 3,845,276.

⁴ The catalogue was not produced by Dabes in its discovery responses, although Mya Saray asked for his sales literature. Instead, Mya Saray discovered the catalogue when one of its distributors alerted it to the fact that Dabes was attempted to sell its counterfeits in the U.S. This withholding of evidence epitomizes the danger in allowing Dabes to unilaterally alter the scope of proper discovery requests, and answers conditioned on ongoing objections.

Furthermore, Dabes objects strongly to the Mya Saray's Document Request No. 31 (Exhibit 2, pg. 31), which seeks documents concerning Dabes document retention policies. Document retention policies are appropriate targets of discovery. *Huthnance v. District of Columbia*, 255 F.R.D. 285, 287 (D.D.C.2008). Dabes' objections should be struck.

18. Dabes' Attempts to Validate its Trademarks is Properly Discoverable.

In Interrogatory No. 37 (Exhibit 1, pg. 16), Mya Saray seeks information on focus group testing, research, or other types of sophisticated analysis of the potential for confusion between the AMY and MYA brands. Defendant objected on the basis that such analysis would be irrelevant. Attempts to discern confusion through focus groups, studies, etc. can be highly probably of likelihood of confusion. *Edina Realty, Inc. v. TheMLSonline.com*, 80 U.S.P.Q.2d 1039, 2006 WL 737064 (D. Minn. 2006) (court denied motion to exclude evidence based on "consumer behavior and marketing" based on focus groups, empirical studies on general Internet usage, and statistics tracking consumer use of defendant's sponsored link).

19. Physical Specimens of Dabes are Appropriately Discoverable.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

20. The Creation of Dabes' Packaging for Its AMY Brand is Properly Discoverable.

In Document Request No. 13 (Exhibit 2, pg. 6), Mya Saray asks for documents and things related to the purchase and ordering of packaging with the AMY Logo or AMY Brand. Without providing a basis, Dabes states that this Request is overly broad and unduly burdensome. Whether Dabes acquires his packaging from foreign third-party manufacturers in the business of organized counterfeiting, or from U.S. or German brand designers is highly probative of likelihood of confusion.

Although Dabes claims to have submitted documents responsive to this Request, Mya Saray cannot ascertain with any reliability that Dabes disclosed any such documents.

21. Submission, Review, and Registration Documents of AMY Trademarks or the Subject Hookahs are Appropriately Discoverable

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

II. General Document Disclosure Tactics by Dabes Are Improper

A. The General Document Disclosure Tactics by Dabes Are Improper

Dabes makes only a single disclosure pursuant to the forty document requests propounding by Mya Saray. Admittedly, this single disclosure was responsive to Mya Saray's first request for disclosure, and because it requested documents identified in the course of answering Plaintiff's First Set of Interrogatories is quite broad. However, the disclosure includes approximately 20 documents, and certainly does not cover the topics of the other document requests. Nonetheless, every subsequent response by Dabes is either (i) "None" or (ii) claims to be already disclosed responsive to Request No. 1. Such a response mechanism obfuscates which documents are responsive to which requests; and nowhere in the response is there a reference either to a particular document, for example by Bates Number, or range of documents. This is improper. *See e.g., DIRECTV, Inc. v. Puccinelli*, 224 F.R.D. 677, 682 (D.Kan.2004)(Because "there is no indication Plaintiff produced any of the requested documents as they are kept in the usual course of business...Plaintiff was required to identify the particular documents or to organize and label them to correspond to these specific requests.")

B. A Blanket Reference to All Discovery Production as "Commercially Sensitive" is Improper.

The Parties are subject to this Board's standard protective order. Every Interrogatory answer, include the "None" and "No response" answers, and every document disclosed, including consumer-facing marketing materials (and opposing counsel's signature and certificate of service) were labeled as commercially sensitive. *See Exhibits 1 and 2*, generally. Even though a blanket protective order permits all documents to be designated as confidential, a party must agree to only invoke the designation in good faith. *Gillard v. Boulder Valley School Dist. Re.-2*, 196 F.R.D. 382, 386 (D.Colo. 2002). While the party challenging a designation under

a protective order has the burden of identifying instances of improper classification, the burden of proving confidentiality remains with the party asserting the claim. *Id.* To be sure, plenty of information provided by Dabes may be commercially sensitive; Dabes discloses, for example, two Chinese third-party manufacturers and invoices to distributors. Other information, such as product catalogues and descriptions of their products, are less suitable for protection. This Board should require Dabes to reconsider the categories into which his discovery production fits.

III. CONCLUSION

Dabes discovery disclosures are riddled with facially unsupportable objections, and in some instances perplexing objections and objections immediately contradicted by the answer. Dabes frequently answers questions not asked. Dabes seems to have decided that this case should be decided by a single inquiry, a comparison of AMY to MYA, and has refused to answer any interrogatories applicable to any other *DuPont* factor. There is not a single explanation for any objection. There are no references to the specific documents produced for any response. Dabes' blanket application of the highest level of protection available under the protective order is unnecessarily restrictive and highly suspect. This Board should grant Mya Saray's motion to compel and require Dabes to respond to its discovery.

DATED: 5/28/2015

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CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the forgoing PLAINTIFF'S BRIEF IN SUPPORT OF ITS FIRST MOTION TO COMPEL has been served on counsel for Applicant by mailing said copy via First Class Mail, postage prepaid to:

Paul D. Bianco
Fleit Gibbons Gutman Bongini & Bianco PL
21355 E Dixie Hwy Ste 115
Miami, Florida 33180-1244
United States

This 28th day of May 2015.

By : M. Keith Blankenship
M. Keith Blankenship

EXHIBIT “I”

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451
General Contact Number: 571-272-8500

Mailed: May 19, 2015

Opposition No. 91218280

Mya Saray, LLC

v.

Ibrahim Dabes dba Dabes Egyptian Imports

**George C. Pologeorgis,
Interlocutory Attorney:**

On January 20, 2015, Applicant filed a “consented” motion to amend the identification of goods of its involved application Serial No. 86025182. By the proposed amendment Applicant seeks to amend the identification of goods from “tobacco; smoking articles, namely, cigarettes, cigars, smoking pipes, and shishas” to “tobacco.”

By order dated January 26, 2015, the Board approved the “consented” motion to amend and allowed Opposer time in which to file a withdrawal of the opposition based upon the approved amendment.

On February 25, 2015, Opposer filed a response to the Board’s order maintaining that, based upon its previous communications with Applicant, it only provided consent to the amendment of the involved application if Applicant would also amend the identification of goods of a registration owned by Applicant and which is subject to a related proceeding involving the parties herein, namely, Cancellation

No. 92060249. Because Applicant never filed a corresponding motion to amend the identification of goods of the subject registration to Cancellation No. 92060249, Opposer, by way of its response, is effectively withdrawing its consent to the proposed amendment of the identification of goods concerning Applicant's involved application Serial No. 86025182, and requests that the Board withdraw its January 26, 2015, order.

On March 13, 2015, Applicant filed a response to Opposer's response contending that, based upon its own understanding regarding the parties' communications, Opposer did provide consent to its proposed amendment of the identification of goods of involved application in this matter without any condition that Applicant would also file a motion to amend the identification of goods of its registration subject to related Cancellation Proceeding No. 92060249.

Based on the foregoing, the Board finds that there has been a clear misunderstanding and/or miscommunication between the parties regarding the circumstances under which Opposer would provide its consent to Applicant's proposed amendment to its application Serial No. 86025182 which is subject to this opposition proceeding. In light of such miscommunication/misunderstanding, the Board construes Applicant's motion to amend filed on January 20, 2015 as an unconsented motion.

In view thereof, the Board's January 26, 2015, order is hereby **VACATED** and consideration of Applicant's motion to amend filed on January 20, 2015 (which the Board now construes as an unconsented motion to amend) is hereby deferred until

final decision or until the case is decided upon summary judgment.¹ See TBMP § 514.03 (2014).

Trial Schedule

In light of the delay in considering the parties' filings regarding Applicant's motion to amend, trial dates are reset as follows:

Discovery is open.

Expert Disclosures Due	9/20/2015
Discovery Closes	10/20/2015
Plaintiff's Pretrial Disclosures	12/4/2015
Plaintiff's 30-day Trial Period Ends	1/18/2016
Defendant's Pretrial Disclosures	2/2/2016
Defendant's 30-day Trial Period Ends	3/18/2016
Plaintiff's Rebuttal Disclosures	4/2/2016
Plaintiff's 15-day Rebuttal Period Ends	5/2/2016

In each instance, a copy of the transcript of testimony, together with copies of documentary exhibits, must be served on the adverse party within thirty days after completion of the taking of testimony. Trademark Rule 2.125.

Briefs shall be filed in accordance with Trademarks Rules 2.128(a) and (b). An oral hearing will be set only upon request filed as provided by Trademark Rule 2.129.

¹ In light of the Board's ruling herein, the identification of goods of Applicant's involved application Serial No. 86025182 will revert back to the identification as originally-filed, namely, "tobacco; smoking articles, namely, cigarettes, cigars, smoking pipes, and shishas."

EXHIBIT “J”

Redacted in its entirety for public record.